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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,632	08/16/2006	Matthias Meinhold	54167/37206	2465
24108 7590 04/16/2009 CARLTON FIELDS, P.A. Attn: IP Dept. P.O. BOX 3239 TAMPA, FL 33601-3239			EXAMINER ANDERSON, GREGORY A	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 04/16/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,632

Applicant(s)

MEINHOLD ET AL.

Examiner

GREGORY A. ANDERSON

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 February 2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-10, 11-13, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riemann 5,407,243 in view of Weiner 4,213,460.

Riemann discloses a device 110 comprising: a housing 112; a spreadable gripper tool 114; a spreader device 132, separate from the gripper tool; a rotation device 130/112; and a presser device 130 that is actuated in the axial direction of the device to actuate the spreader device and the rotation device of the gripper tool, wherein a first actuation of the presser device effects a spreading of the gripper tool by the spreading device. Riemann also discloses a second actuation that effects the rotation of the gripper tool (Rotating the ring 130 will effect rotation of the device. The rotation of the

device is necessary as indicated by Riemann Col. 4 ll. 33-45). Riemann further discloses the gripper tool being closed by the first actuation: the recoil initiated by the spring after the first actuation has taken place will serve to close the jaws. Riemann discloses the first actuation being into the device and the second actuation is capable of being performed while also moving the device in an axial direction either into or out of the device. Riemann discloses the gripper being formed of two segments 122 and 124. Riemann further discloses the segments of the gripper tool forming inward facing jaws (Fig. 5). Riemann further discloses a spring force against which the spreading of the segments takes place (Figs. 2-3).

However, Riemann does not disclose the gripper tool in its un-spread position encloses an essentially closed cavity that is designed to contain a tick.

Weiner discloses a gripper 22/24 that defines a closed cavity designed to contain a tick. Weiner further discloses the device having an apparatus to paralyze or kill the parasite (Col. 4 ll. 28-40) and that the gripper tool comprises a moisture dispenser (Col. 4 ll. 28-40). Weiner further discloses the gripper being coated in adhesive (Col. 5 ll. 5-8).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Riemann with the gripper of Weiner in order to facilitate the secure gripping of the tick with the device.

4. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riemann in view of Weiner and further in view of Daniell 4,976,718.

Riemann in view of Weiner discloses the invention essentially as claimed as discussed above.

However, Riemann in view of Weiner does not disclose the segments of the gripper being elastic or comprising barbs.

Daniell discloses the segments of the gripper comprising barbs which due to their plastic construction will exhibit elastic recoil when bent.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Riemann in view of Weiner with the barbs of Daniell to facilitate the close surrounding of the parasite without crushing or squeezing as taught by Daniell (Abstract II. 12-17).

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riemann in view of Wiener and further in view of Sandels 4,748,767.

Riemann in view of Weiner discloses the invention essentially as claimed as discussed above.

However, Riemann in view of Weiner does not disclose the device comprising a suction device connected to the gripper.

Sandels discloses using a suction device 14 connected to the gripper 4.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Riemann in view of Weiner with the suction device of Sandels in order to cause the tick to release its bite and move to a new location in search of air as taught by Sandels (Col. 3 II. 28-30).

6. Claims 17, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riemann in view of Wiener and further in view of Haber et al. 5,282,806.

Riemann in view of Weiner discloses the invention essentially as claimed as discussed above.

However, Riemann in view of Weiner does not disclose the gripper tool being interchangeable, or an ejector device for the ejection of the gripper tool.

Haber et al. further discloses the gripper being interchangeable and replaceable (Col. 1 ll. 66-68). Haber et al. further discloses an ejector device that detaches the gripper tool (Col. 6 ll. 45-50).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Riemann in view of Weiner with the gripper and ejector of Haber et al. in order to quickly adapt the device to the needs of the physician.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 2, and 4-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY A. ANDERSON whose telephone number is (571)270-3083. The examiner can normally be reached on Mon-Thurs 9:30am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A Anderson/

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773